



**NAILAH K. BYRD  
CUYAHOGA COUNTY CLERK OF COURTS  
1200 Ontario Street  
Cleveland, Ohio 44113**

**Court of Common Pleas**

**New Case Electronically Filed: COMPLAINT  
January 4, 2021 14:40**

By: RONALD I. FREDERICK 0063609

Confirmation Nbr. 2148058

COMPANION ANIMAL HOSPITAL

CV 21 942532

vs.

BLAIS MICROSCOPE COMPANY, LLC

**Judge: SHERRIE MIDAY**

Pages Filed: 7

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

COMPANION ANIMAL HOSPITAL 6165 SOM Center Road Solon, OH 44139	)     CASE NO.: ) ) )
Plaintiff,	) ) )
-vs-	) <b><u>CLASS ACTION COMPLAINT AND</u></b> )
BLAIS MICROSCOPE COMPANY, LLC 930 3RD ST SW Fairbault, MN 55021	) <b><u>JURY DEMAND</u></b> ) ) )
Defendant.	) ) )

**INTRODUCTION**

Plaintiff Companion Animal Hospital (“Plaintiff”) brings this Class Action Complaint against Defendant Blais Microscope Company, LLC (“Defendant”) for violations of the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”) in sending unsolicited facsimiles to people and businesses who have not given their consent. Plaintiff, for its Complaint, alleges as follows upon personal knowledge as to itself, and as to all other matters, upon information and belief, including investigation conducted by its attorneys.

1.     The TCPA prohibits any unsolicited facsimiles.

**PARTIES**

2.     Plaintiff is a veterinary clinic in Solon, Ohio,
3.     Plaintiff is a resident of Ohio who received an unsolicited facsimile from Defendant on its office fax machine, which is a physical machine and not a fax server, without its consent.

4. Defendant is a limited liability company headquartered and registered in Minnesota.
5. Defendant provides microscope sales, service, and repair to customers nationwide.
6. Defendant solicits small businesses of all nature, including medical offices and veterinary clinics, to purchase its services.

#### JURISDICTION

7. This Court has jurisdiction under R.C. §2305.01 and Ohio Const. Article IV, Section 4(B).

8. Venue is proper in this Court because Defendant directed its acts and conduct herein to Cuyahoga County, Ohio and Plaintiff's injuries occurred here.

#### FACTS

9. On or about June 9, 2020, Plaintiff received a single page facsimile on its fax machine. (attached hereto as Exhibit 1).

10. Defendant's business name and website address are in bold on the top of the facsimile, followed by a description of itself, credentials, and reach to a broad array of customers in "**over 30 states!**" *Id.*

11. Defendant advises the recipient that Defendant's service engineer would be in the area so to "Act now to Schedule!" and includes the cost of the service fee, a phone number, address, and website information to contact. *Id.*

12. Plaintiff has no business relationship with Defendant, did not give Defendant its number, and has not consented to be sent a facsimile.

13. On information and belief, Defendant routinely sends its facsimiles to recipients where no relationship exists and sends these facsimiles without prior consent to do so.

14. On information and belief, Defendant continues to solicit businesses by sending these facsimiles nationwide.

15. Plaintiff was damaged by this facsimile by suffering a monetary loss due to the facsimile, incurring the costs of the use of facsimile paper, ink and toner, loss of employee time to review the facsimile, invasion of privacy, nuisance, interruption of work, trespass to its chattel by interfering with its office facsimile used to aid patients, stress, aggravation, and because a violation of the TCPA itself is a concrete injury.

### **CLASS ALLEGATIONS**

16. Class Definition: Plaintiff brings its action pursuant to Rule 23 of the Ohio Rules of Civil Procedure on behalf of itself and a Class of similarly situated individuals or businesses, defined as follows:

All persons in the United States who received a facsimile from or on behalf of Defendant and who had no ongoing business relationship with Defendant and had not given consent to receive facsimiles from Defendant or where the facsimiles did not provide opt out language, within the four years prior to the filing of the Complaint until the class is certified.

17. Numerosity: The exact number of class members is unknown and is not available to Plaintiff at this time, but individual joinder in this case is impracticable. The Class likely consists of hundreds or thousands of individuals and businesses. Class members can be easily identified through Defendant's or its agent's records.

18. Commonality and Predominance: There are many questions of law and fact common to the claims of Plaintiff and other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include but are not limited to the following:

- a) Whether Defendant sent the fax or had it sent on its behalf;

- b) Whether Defendant had or attempted to obtain consent;
- c) How Defendant compiles its list of individuals/companies to send facsimiles;
- d) Whether Defendant has processes in place to prevent unsolicited facsimiles;
- e) Whether Defendant's conduct was willful;
- f) Whether Defendant's facsimile was a solicitation; and
- g) Whether Defendant's conduct constitutes a violation of the TCPA.

19. Typicality: Plaintiff's claims are typical of the claims of other Class members and it sustained the same damages as other members of the Class as a result of Defendant's actions.

20. Adequate Representation: Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel competent and experienced in complex litigation and class actions, including TCPA cases. Plaintiff has no interests antagonistic to the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and its counsel are committed to vigorously prosecuting this action on behalf of members of the Class and have the financial resources to do so.

21. Superiority: This case is appropriate for certification because class proceedings are the best method available for the fair and efficient adjudication of this controversy in light of the common issues across the class.

**CAUSE OF ACTION**  
Violation of 47 U.S.C § 227  
(On behalf of Plaintiffs and the Class)

- 22. Plaintiff incorporates the foregoing allegations as if fully set forth herein.
- 23. The TCPA expressly prohibits unsolicited facsimile advertising, 47 U.S.C. § 227(b) (1) (C).
- 24. Defendant violated this provision by sending unsolicited faxes to Plaintiff.

25. As a result of Defendant's unlawful conduct, Plaintiff and the other members of the Class suffered actual damages as set forth in paragraph 15 above and under Section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in statutory damages for each violation.

26. Should the Court determine that Defendant's misconduct was willful and knowing, the Court may, pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Class to \$1,500 for each violation.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of itself and the Class, respectfully requests that this Court enter an order:

- A. Certifying this case as a class action on behalf of the Class defined above, appointing Plaintiff as representative of the Class, and appointing its counsel as Class Counsel;
- B. Awarding injunctive and other equitable relief as necessary to protect the interests of the Class, including, *inter alia*, an order prohibiting Defendant from engaging in the wrongful and unlawful acts described herein;
- C. Awarding actual and statutory damages;
- D. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;
- E. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and
- F. Awarding such other and further relief as equity and justice may require.

Respectfully submitted,

/s/Ronald I. Frederick

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JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

/s/Ronald I. Frederick

Ronald I. Frederick (#0063609)

Frederick & Berler, LLC

One of the *Attorneys for Plaintiff*

